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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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APR 27 2004

Federal Communications Commission
Office of the Secretary

In the Matter of

Amendment of Section 73.202(b)

Table of Allotments

FM Broadcast Stations

(Refugio, Sinton, Taft, and Woodsboro, Texas)

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MB Docket No. 03-

RM - 10958

To: Chief, Office of Broadcast License Policy
Audio Division
Media Bureau

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Federal Communications Commission
Office of the Secretary

**PETITION FOR RULE MAKING
REQUEST FOR EXPEDITED PROCESSING**

Amigo Radio, Ltd. ("Amigo")¹ and Pacific Broadcasting of Missouri LLC ("Pacific")² (collectively, the "Joint Petitioners") by their counsel, hereby submit this Petition for Rule Making ("Petition") filed pursuant to Sections 1.401 and 1.420(i) of the Commission's Rules.³ The Joint Petitioners respectfully request that the Commission institute a rule making proceeding to: (1) reallocate Channel 279C1 from Sinton, Texas to Refugio, Texas and modify the community of license of station KOUL(FM) to operate on Channel 279C1 at Refugio; (2) modify the operating condition for KTKY(FM) to permit the station to commence program test authority ("PTA") on Channel 293C2 in Taft, Texas when KOUL(FM) commences PTA in Refugio; and (3) reallocate Channel 263A from Refugio, Texas to Woodsboro, Texas. As shown below, the reallocation would provide the community of Woodsboro with a first local service, expedite commencement of a first local service in Taft, and retain a first local service in

¹ Amigo is the licensee of KOUL(FM), Sinton, Texas.

² Pacific is the licensee of KTKY(FM), Taft, Texas.

³ Section 1.420(i) provides that "(i) In the course of the rulemaking proceeding to amend §73.202(b) ... the Commission may modify the license ... of an FM ... broadcast station to specify a new community of license where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment."

Refugio and Sinton. Hence, the reallocation constitutes a preferential arrangement and improved service to the public. The Joint Petitioners request expedited processing of this rulemaking petition so that KTKY(FM) may resume operation with full and dramatically improved facilities for the station. In support thereof, the following is hereby shown:

I. Technical Compliance

A. KOUL(FM)

The Petition proposes modifications to the FM Table of Allotments by reallocating Channel 279C1 from Sinton to Refugio, Texas, and modifying the community of license of station KOUL(FM) to operate on Channel 279C1 at Refugio. These changes will require modification of the current KOUL(FM) license to change the community of license for the station from Sinton to Refugio with no relocation of the transmitter site.⁴ Neither Sinton nor Refugio are located within the defined boundaries of any urbanized areas; however, the proposed 70 dBu contour will cover more than 50% of the Corpus Christi, Texas urbanized area. Since the change does not involve a change in transmitter site, the proposed reallocation does not implicate the Commission policy concerning the potential migration of stations from underserved rural areas to well-served urban areas.⁵ Consistent with such policy, no Tuck showing is required. Even if such a showing was required, the fact that the Commission has allocated three FM channels to Refugio more than amply demonstrates the independence of Refugio from the Corpus Christi urbanized area.

As detailed in the attached Engineering Statement, the proposed allotment comports with the Commission's minimum-distance separation requirements as outlined in Section 73.207(b) of

⁴ The reference coordinates are 28-02-07 N and 97-26-11 W. See Engineering Statement of Jefferson G. Brock, attached as Exhibit 1 ("Engineering Statement").

⁵ See *Avoca, Freeland and Wilkes-Barre, Pennsylvania*, MB Docket No. 03-140 (Aud. Div.) (rel. Oct. 3, 2003).

the Commission's rules.⁶ The proposed allotment of Channel 279C1 to Refugio is mutually exclusive with the existing allotment of that channel at Sinton, and the Refugio allotment would provide the requisite principal-community coverage to the entire community of Refugio.⁷

KOUL(FM) currently operates as one of three commercial broadcast stations licensed to Sinton, Texas.⁸ Because Sinton will continue to be served by two commercial radio stations, the proposed relocation of KOUL(FM) would not result in the removal of Sinton's sole local transmission service. Because no change in transmitter site is proposed, KOUL(FM) will continue to provide city-grade coverage to Sinton; no change in the gain area and loss area will occur; and no underserved areas will be created as a result of this proposed change.⁹

B. KTKY(FM)

The proposed change in community of license of KOUL(FM) to Refugio further serves the public interest by expediting provision of a first local service to the community of Taft, Texas. The Joint Petitioners request that the Commission modify the condition imposed upon when KTKY(FM) may commence operations in Taft to state that KTKY(FM) may initiate PTA in Taft when KOUL(FM) commences PTA in Refugio. The modification will permit KTKY(FM) to provide Taft with its first local service significantly sooner, thereby serving the public interest.

The Commission has already approved a change in community of license for KTKY(FM) from Refugio to Taft.¹⁰ However, because the proposed change in community of license for

⁶ See Engineering Statement.

⁷ See *Id.*

⁸ Data from the FCC Audio Division's website indicates that KNCN(FM) and KDAE(AM) would continue to serve Sinton.

⁹ See Engineering Statement.

¹⁰ See *Refugio and Taft, Texas*, 15 FCC Rcd 8497 (Alloc. Br. 2000).

KTKY(FM) ostensibly would deprive Refugio of its sole licensed first local service, the Commission imposed a condition upon KTKY(FM), prohibiting the station from commencing operation with its new facilities in Taft until the FCC had issued a permittee a construction permit for either of the two vacant allotments presently licensed to Refugio and the permittee initiated program test authority.¹¹ The same condition is specified in the construction permit for KTKY(FM).¹²

The condition has rendered it impossible for KTKY(FM) to provide first local service to Taft in the foreseeable future because of events beyond Pacific's control. The Commission has denied Pacific's requests to lift the condition and permit KTKY(FM) to commence program test authority in Taft before either vacant allotment is activated.¹³ The continued delays in conducting Auction No. 37 means that several more years will pass before the community of Taft receives its first local service.¹⁴

KTKY(FM) can begin providing a first local service to Taft *immediately* if the Commission modifies the condition on KTKY(FM) to permit the station to commence operation in Taft when KOUL(FM) commences operation in Refugio. The Joint Petitioners have control over when KTKY(FM) and KOUL(FM) may initiate program test authority in Taft and Refugio, respectively. The Joint Petitioners will expeditiously file their respective applications for

¹¹ See *Id.* The two vacant allotments are Channel 263A and Channel 291A.

¹² See FCC File No. BPH-20000613AAF.

¹³ See *Application for Pacific Broadcasting of Missouri LLC for Special Temporary Authority to Operate Station KTKY(FM), Refugio, Texas*, 18 FCC Rcd 2291 (2003). A petition for reconsideration of this decision is pending before the Commission.

¹⁴ Reasonable estimates are that at least another year will pass before the pending legal challenges surrounding Auction No. 37 are resolved. Even if the courts rule in favor of the Commission, another year will pass before the agency issues construction permits for Auction No. 37. The successful bidder for either vacant allotment in Refugio would then have three more years to build their new facilities. This optimistic assessment assumes that the Commission is successful on appeal. If the courts rule against the FCC, it could be well over half a decade before the FCC conducts Auction No. 37.

construction permit, construct the necessary facilities, and commence program test authority.¹⁵ The Joint Petitioners can implement the new facilities for KOUL(FM) and KTKY(FM) quicker than waiting for final disposition of Auction No. 37.

C. WOODSBORO, TEXAS

The Petition proposes reallocating Channel 263A from Refugio to Woodsboro, Texas. These changes will not require modification of any FCC license as Channel 263A is a vacant allotment.¹⁶ The community of Woodsboro is not located within the defined boundaries of any urbanized areas nor will the proposed 70 dBu contour cover more than 50% of the Corpus Christi, Texas urbanized area.¹⁷ In addition, no change in reference coordinates for Channel 263A is proposed.

The proposed allotment comports with the Commission's minimum-distance separation requirements as outlined in Section 73.207(b) of the Commission's rules. The proposed allotment of Channel 263A to Woodsboro is mutually exclusive with the existing allotment of that channel at Refugio, and the Woodsboro allotment would provide the requisite principal-community coverage to the entire community of Woodsboro.¹⁸

The vacant allotment does not provide service to Refugio. Because Refugio will be served by KOUL(FM), the proposed relocation of the vacant allotment would not result in the removal of Refugio's sole local transmission service. In addition, as described below,

¹⁵ The nature of the proposed changes for KOUL(FM) does not require any construction. Amigo therefore may commence PTA immediately upon the effective date of the Report and Order by the FCC authorizing the proposed change in community of license for KOUL(FM) to Refugio. Amigo may file its license application for KOUL(FM) simultaneously with the station commencing PTA. Pacific already has a construction permit for KTKY(FM) for the proposed facilities. If the FCC modifies the operating condition for KTKY(FM), Pacific Broadcasting could complete construction and commence operation shortly after the effective date of the Report and Order.

¹⁶ The reference coordinates are 28-21-00 N and 97-16-30 W. *See* Engineering Statement

¹⁷ The 70 dBu does not intersect any of the Corpus Christi urbanized area. *See* Engineering Statement.

¹⁸ *See* Id.

Woodsboro is a preferred community to Refugio because it will permit the introduction of a first local service to the community of Woodsboro. Because no change in transmitter site is proposed, no change in the gain area and loss area will occur nor will any underserved areas be created as a result of this proposed change.¹⁹

II. Community of License – Woodsboro, Texas

Amigo and Pacific request a change in the authorized community of license for vacant allotment 263A from Refugio to Woodsboro, through the deletion of the current allotment of Channel 263A at Refugio and the relocation of that channel to Woodsboro. In accordance with the *FM Priorities*,²⁰ the allocation represents an enhanced allotment priority over retention of the allotment in Refugio because the allocation will result in the introduction of a first local service to Woodsboro. First local service constitutes a priority (3) under the *FM Priorities*, while retention of the existing station at Refugio represents at best a priority (4) in light of the other radio stations licensed to that community.²¹

Woodsboro possesses characteristics demonstrative of a community. The Woodsboro community has a population of 1,685 persons.²² Woodsboro is located in southwestern Refugio County. The town began as part of a land development project organized in 1906 by W. C. Johnson and George P. Pugh, experienced developers from Danville, Illinois. The town was originally called Church because it was located just north of the Church on the St. Louis, Brownsville and Mexico Railway, which built through the area in 1906. The town name was changed to Woodsboro in 1907 after Captain Tobias D. Wood, who sold the Bonnie View Ranch

¹⁹ See Engineering Statement.

²⁰ See Revision of FM Assignment Policies and Procedures, 99 FCC 2d 88 (1988).

²¹ The FM allotment priorities are (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). *Id.*

to the developers. By 1908 Woodsboro had its first school, 25 buildings, including a hotel, cotton gin and a lumberyard. By 1915 the town had over 500 residents, a newspaper, Masonic temple, a bank, and electrical power and lights. Woodsboro was incorporated in 1928.

Woodsboro has its own zip code (78393) and its own post office, both of which are indicative of an established community.²³ Woodsboro, Texas has its own web page, <http://woodsborotx.us/>.²⁴ Woodsboro has its own public schools, including an elementary, junior and high school.²⁵ Woodsboro provides city services, including a volunteer fire department, sheriff's office, and a public works department.²⁶ Woodsboro has a mayor, mayor pro-tem, and five councilmen. Woodsboro has its own Lions Club.

Woodsboro has 8 churches, including the Church of Christ, Faith United Church of Christ, First Baptist Church, New Hope Baptist Church, New Light Baptist Church, Peace Lutheran Church, and St. Therese Catholic Church.²⁷ Numerous restaurants and companies are located in Woodsboro, including Discount Auto Parts, Roses Beauty Shop, Maxwell's House of Hair, Modern Salon, Mathis Motor Inn & RV Park and Niemann Insurance Agency. Woodsboro also has its own bank branch called First National Bank of Woodsboro.

Based on the foregoing facts, Woodsboro qualifies as a community for reallocation of Channel 263A from Refugio, Texas, to Woodsboro, Texas, as that community's first local service.

²² See Exhibit 2.

²³ See Exhibit 3.

²⁴ See Exhibit 4.

²⁵ See Exhibit 5

²⁶ *Id.*

²⁷ *Id.*

Amigo hereby states that in the event that the Commission makes the proposed changes to the FM Table of Allotments for KOUL(FM), Amigo will timely file the necessary application for a construction permit for a new station and will construct the new facility in a timely manner. Pacific hereby states that in the event that the Commission makes the proposed changes to the FM Table of Allotments for Channel 263A, Pacific will timely file the necessary application for a construction permit for a new station and will construct the new facility in a timely manner.

III. Request for Expedited Processing

The Joint Petitioners submit that the public interest would be served if the Commission expedited processing of this rulemaking petition. Expedited processing would permit KTKY(FM) to resume providing FM radio service to the public.

Pacific filed the initial petition for rulemaking to change the community of license of KTKY(FM) from Refugio to Taft on December 23, 1998. In 2000, the FCC approved modification of KTKY(FM) to operate from Taft. However, as discussed above, KTKY(FM) may not commence operations in Taft until the FCC issues a construction permit for the vacant allotment at either Channel 263A or Channel 291A in Refugio and the permittee initiates PTA on the vacant allotment. Pacific has explained why unforeseeable events beyond its control --- namely continued delays in Auction No. 37 -- have prevented satisfaction of the operation condition imposed by the FCC on KTKY(FM). Thus, KTKY(FM) has been unable to commence operations and provide a first local service to Taft.

On March 12, 2001, Pacific ceased operations of KTKY(FM) from its presently licensed site because the company lost the lease on its tower site for Refugio and was unable to negotiate with the site lessor for an extension of the site lease. The FCC has authorized KTKY(FM) to remain silent, and on October 21, 2003, the agency tolled the construction permit for the station,

pending satisfaction of the operating condition for KTKY(FM).²⁸ On October 10, 2003, Pacific filed a request for special temporary authority for KTKY(FM) to operate with significantly reduced power from a tower site different than the site specified either in the station's license or construction permit. The Commission granted this request on October 21, 2003.

The public interest would be served through expedited processing of this rulemaking petition. Expedited processing would permit KTKY(FM) to resume operations and provide wide-area service with its authorized Class C2 facilities. The alternative is for KTKY(FM) to operate with substantially reduced facilities or for the station to continue remaining silent.

CONCLUSION

The instant Petition proposes the following changes to the FM Table of Allotments:

<u>Community</u>	<u>Current</u>	<u>Channel No.</u>	<u>Proposed</u>
Refugio, Texas	263A, 291A		279C1, 291A ²⁹
Sinton, Texas	267C1, 279C1		267C1
Taft, Texas	293C2		293C2
Woodsboro, Texas	-----		263A

This proposal will serve the public interest by providing Woodsboro, Texas, with its own first local service and expedite a first local service to Taft, Texas. Refugio and Sinton Texas, which each currently has local service, would still retain a local service. For these reasons, Amigo and Pacific respectfully request that the FCC initiate and approve this rule making proceeding to modify the FM Table of Allotments as proposed herein to provide improved

²⁸ See FCC File No. BSTA-20031010ADR.

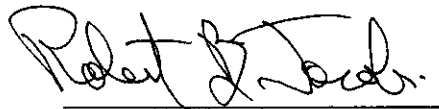
²⁹ A counterproposal in MB Docket No. 02-248 proposes to substitute either Channel 221A or 221C3 for Channel 291A at Refugio. This petition proposes no changes in Channel 291A and hence is neither in conflict nor contingent upon any action taken in MB Docket No. 02-248.

service to the local communities involved, and modify the operating condition for KTKY(FM), which will result in a greater benefit to the public.

WHEREFORE, FOR THE FOREGING REASONS, Amigo Radio, Ltd. and Pacific Broadcasting of Missouri LLC respectfully request that the Commission issue a Notice of Proposed Rule Making in connection with the proposal outlined in this Petition for Rule Making and modify Section 73.202(b) accordingly.

Respectfully submitted,

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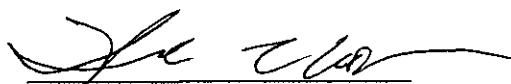
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